

MEMORANDUM FOR: Acting Deputy Director for Administration

FROM: James H. McDonald
Director of Logistics

SUBJECT: Proposed Real Property Assignment Circular
(Office of Management and Budget)

REFERENCE: Memo dtd 19 Dec 77 to Heads of Executive
Departments and Agencies fm OMB, same
subject (DDA 77-6548; OL 7 5819)

1. Action Requested: The Office of Logistics has been provided the referent and its accompanying proposed Office of Management and Budget (OMB) Circular (Attachment 1) establishing policies for the assignment of Federal Real Property to Nonfederal Activities. This memorandum provides comments on the proposals contained in the circular and, in paragraph 4, recommendations for inclusion in the Deputy Director for Administration's response to OMB.

2. Background: The proposed circular provides guidelines and sets forth policies for the assignment of federally controlled space for nonfederal activities. The purpose of the circular is to standardize the assignment of nonfederal space among all Government agencies. The circular basically requires nonfederal activities that are not exempt by specific statute to pay equivalent commercial rents for the use of Federal space, in most cases the prevailing General Services Administration (GSA) rates under the Standard Level User Charge (SLUC) program. Activities exempt by statute include the credit union (12 U.S.C. 1770) and blind vending facilities (20 U.S.C. 107 et seq). This is the second proposed circular dealing with the same subject. The first proposal was submitted in 1975 and comments from various Government agencies were solicited. This office reviewed the first proposal and duly commented on the proposal (Attachment 2). Also, additional comments were registered by the Associate General Counsel, Office of Logistics (Attachment 3). In both

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memoranda of comments, recommendations were made to oppose the circular as written. Our current review of the second OMB proposed circular gives rise to Agency concern that for certain nonfederal activities to be charged for space assigned would have an adverse effect on both the Agency's operations and morale. Listed below are the categories of nonfederal space assignments contained in the circular which directly affect the Agency:

a. Cafeteria Services. These services are provided by Government Services, Incorporated (GSI) under contract to GSA and are considered a concession, as defined by the proposed circular, and subject to payment of rent. At the present SLUC rate GSI would be charged an annual rent of \$676,252 for Headquarters, \$79,000 for Ames, and \$78,000 for [REDACTED]. The annual SLUC rent for the three cafeterias would amount to \$833,252. At a recent meeting of representatives from GSI, GSA, and various Government agencies, it was announced that the GSI anticipated operating losses in 1978 of approximately \$2,145,000 (Attachment 4). To partially offset this anticipated loss, it would be necessary to increase food costs effective 1 February 1978, and curtail services. The Headquarters cafeteria was one of the cafeterias mentioned for a scheduled curtailment of services. These measures, planned by GSI to relieve the operating deficit, did not take into consideration the proposed assessment of rental costs for assigned Federal space. It can be assumed that the additional financial burden placed on GSI would result in the abandonment of cafeteria service or the entire increase in operating costs being passed on to the Government employee. Either would have a severe adverse effect on employee morale and the Government would suffer a loss of employee time and productivity.

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b. Snack Bar-Vending Machine Concessions. It is our understanding that the snack bar-vending machine concessions are a contractual agreement between GSA and commercial firms. Arrangements have been made by GSA and the firms whereby a percentage of the profits is donated to the Society for the Blind. It is assumed

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that the agreement is in compliance with the Randolph-Sheppard Act, as amended. Although blind vending operations are exempt from charges for use of federally controlled space, the question arises as to the status of the commercial firm operating the concession and its accrued portion of the profit. It could be assumed, since it is not specifically defined in the circular, that the commercial firm would be charged for a pro-rated portion of the space rental cost. If this is indeed the case, it can be assumed that, like the GSI cafeteria, the commercial firm would either abandon the operation as unprofitable or would pass on any rental cost assessment by increasing prices charged the consumer. Again it becomes an employee morale factor and in the case of abandonment of the operation, a severe reduction of revenue for the charitable organization involved.

c. Employee Welfare and Recreation Associations.
The Agency assignment of Federal space to its employee welfare and recreation activities, e.g., the Employee Activity Association (EAA), Insurance Branch, Educational Aid Fund, and the Public Service Aid Society, could qualify for a waiver of, or reduction of, such charges provided EAA's "use of real property does not interfere with the Government's use and does not result in the Government incurring additional expense." In addition to this caveat, we must consider some other problem areas of the EAA program that may arise as a result of the promulgation of the circular in its present form. These problem areas are four in number:

(1) There are, at present, plans to construct recreation facilities on Federal land at the Headquarters site. These plans, a joint sponsored venture of the Agency and EAA, call for construction costs to be funded by both parties. Accordingly, the present language of the circular does not allow use of this Federal space without rental charge if the Government incurs additional expense. Therefore, it is assumed that rental charges would have to be

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assessed the EAA recreation program. It also can be assumed that, since the facilities are EAA sponsored and rental funded, use of the facilities would be by EAA membership only and membership fees would be increased to cover the additional costs of EAA operating the facilities.

(2) EAA Retail Store. The question arises, does the operation by EAA of the existing retail store constitute a concessionaire operation since the sale of private industry commodities is involved? The language of the circular is ambiguous in this regard when it states that "Federal space may be assigned on a concession basis to commercial activities that provide services to Federal employees." It is our interpretation of the circular that the EAA retail store falls into the category of a concession and is thereby subject to assessment of charges for the use of Federal space. It is assumed that this additional cost to EAA would result in higher prices to the consumer. As the store is a convenience-type operation and other similar facilities are not reasonably accessible to the employees, the closing of the store would create a morale problem.

(3) EAA Sponsored Barber Shop. The existing barber shop is a concession as defined by the proposed circular and as such is subject to charges. At the present SLUC rate the annual rental of the barber shop space would be \$5,500. It can be assumed that the increase in the overhead cost of the barber shop operation would be passed on to the consumer. Closing of the shop is apt to create morale problems similar to those mentioned previously.

(4) Day Care Centers. The proposed circular provides for the assignment of Federal space for day care center purposes if the head of an agency determines that the facility is essential to the

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efficient operation of the agency. Once such a facility becomes a reality, the circular proposes that the fees charged to parents for using the centers shall be sufficient to recapture the Government's full cost of providing the services. Agencies are expected to pay for the value of the space as well as all alterations, renovations, equipment, furniture, supplies, utilities, maintenance, custodial services, and staffing. It has been proposed that the Agency establish a day care center at the Headquarters compound. At this writing it has not been determined how the facility is to be funded. If it is to be an EAA operation, then under the conditions of the circular EAA would be assessed charges for the use of Federal space. In either situation, an EAA and/or Agency operation, all overhead and operating costs would be reflected in the fees charged the parents. Using the current SLUC rate, we estimate the annual cost at \$40,000 based on plans and drawings recently provided to the Director of Personnel. It is our contention that without some form of Government subsidy for use of space, the proposition of a day care center will be an expensive one for the user and may be out of reach for lower salaried personnel.

3. Staff Position: For the reasons stated above, it is our conclusion that the Agency should strongly oppose the OMB proposed circular as it is presently written. It is believed that the circular is too punitive on this Agency, especially the Headquarters complex, because of its remoteness to other alternative facilities. Any closing of facilities or excessive increases in consumer costs resulting from the circular would not only be an employee hardship and morale problem but would force the employee to search for alternative facilities away from Headquarters. This, it is believed, would cost the Government more in lost employee time and productivity than any savings made from recouping rental charges from the nonfederal activities.

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4. Recommendations:

a. It is recommended that the Agency oppose the OMB circular in its current form since strict adherence would:

(1) Result in creation of a prohibitively expensive food service operation and could lead to the elimination of such services entirely.

(2) Preclude any reasonable hope of establishing a viable day care center operation for Agency personnel.

(3) Reduce or eliminate the benefits currently derived from operations of the EAA.

b. It is further recommended that the Agency response suggest that the Head of Agency's latitude be broadened. This could be accomplished by the addition of a sentence to paragraph 6 of the proposed circular stating: A Head of Agency whose facilities are remote or otherwise not readily accessible to a wide range of employee needs may exempt those services deemed necessary to employee morale and efficiency from the charges established in paragraph 5b above.

James H. McDonald

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